

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jesse Spieler-Jones	Team: Team # 5	CCRB Case #: 200911340	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/10/2009 10:50 AM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 1/10/2011	EO SOL 1/10/2011	
Date/Time CV Reported Sat, 07/18/2009 12:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/23/2009 11:25 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Diaz	28347	940091	077 PCT
2. An officer			077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Diaz	Abuse: PO Daniel Diaz entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B. An officer	Abuse: An officer entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Synopsis

On July 10, 2009, shortly before 10:50am, inside § 87(2)(b) in Brooklyn, § 87(2)(b) punched her sister, § 87(2)(b) in the face during a verbal dispute. Soon after § 87(2)(b) left the apartment, PO Daniel Diaz and an unidentified white male officer arrived at § 87(2)(b)'s apartment and spoke with her in the hallway outside. After § 87(2)(b) admitted to assaulting her sister, the officers allegedly followed her inside her apartment (Allegations A and B) and PO Diaz ordered her to step outside again. When § 87(2)(b) complied, she was handcuffed. § 87(2)(b) asked the officers to retrieve her ID from her apartment and the white male officer did so (Allegation B). § 87(2)(b) was arrested and charged with § 87(2)(b).

§ 87(2)(g)

Summary of Complaint

On July 10, 2009, § 87(2)(b) filed this complaint with Internal Affairs via telephone (encl. 4a) on behalf of his girlfriend, § 87(2)(b). During a telephone call on July 31, 2009 (encl. 6a), § 87(2)(b) stated that he had not witnessed the incident.

§ 87(2)(b) is a § 87(2)(b)-old female with brown hair and brown eyes who is 5'8" tall and weighs 145 lbs. § 87(2)(b) made statements regarding this incident over the telephone on July 31, 2009 (encl. 7a-b), in person at the Civilian Complaint Review Board on August 12, 2009 (encl. 8a-h) and over the telephone on August 12, 2009 (encl. 9a). § 87(2)(g)

On July 10, 2009, shortly before 10:50am, § 87(2)(b) was inside her apartment, apartment § 87(2)(b) at § 87(2)(b) in Brooklyn, with her sister, § 87(2)(b) her aunt, § 87(2)(b) and her friend, § 87(2)(b). § 87(2)(b) became involved in a dispute with § 87(2)(b) which peaked when § 87(2)(b) pushed § 87(2)(b)'s head backward and § 87(2)(b) retaliated by punching § 87(2)(b) in the face. § 87(2)(b) left § 87(2)(b)'s apartment approximately 15 to 20 minutes later.

Approximately 30 to 45 minutes after § 87(2)(b) left, § 87(2)(b) heard a knock on the door. § 87(2)(b) answered the door, and § 87(2)(b) heard a male ask for § 87(2)(b). When § 87(2)(b) came to the door, she saw a uniformed Hispanic male officer, identified via investigation as PO Daniel Diaz, and an unidentified white male officer in uniform. PO Diaz told § 87(2)(b) to step out of her apartment, and § 87(2)(b) complied. PO Diaz informed § 87(2)(b) that he had been in the vicinity of § 87(2)(b)'s building when he was flagged down by § 87(2)(b). PO Diaz asked § 87(2)(b) what had happened, and § 87(2)(b) described the fight to PO Diaz and stated that she had hit § 87(2)(b). § 87(2)(b) then walked back into her apartment, and PO Diaz and the white officer followed her into the area just inside her front door. § 87(2)(b) did not report objecting to the officers' entry. PO Diaz then patted § 87(2)(b)'s front and back pants pockets and ordered § 87(2)(b) to step out of her apartment. During her initial statement to the undersigned via telephone on July 31, 2009, § 87(2)(b) stated that PO Diaz and the white officer had physically pulled her out of her apartment while she resisted. However, during her sworn statement to the CCRB on August 12, 2009, § 87(2)(b) stated that she agreed to step out of her apartment and then voluntarily followed the officers out.

As soon as § 87(2)(b) had exited her apartment, PO Diaz told § 87(2)(b) that she was under arrest. § 87(2)(b) became very upset, verbally disputed the legitimacy of the arrest and turned back toward her front door while yelling for her aunt. PO Diaz then grabbed § 87(2)(b)'s left upper arm, and § 87(2)(b) continued to attempt to move toward her door while yelling. As soon as PO Diaz secured § 87(2)(b)'s other arm, he moved § 87(2)(b)'s right arm behind her back, pushed her into a nearby wall and immediately handcuffed her. § 87(2)(b) did not experience any pain or sustain any injury as a result of this push. One of the officers may have asked if § 87(2)(b) had ID at this time, and § 87(2)(b) replied, "I don't have no ID. I don't have nothing on me. You got to get my ID cause I don't have it." The white officer consequently entered § 87(2)(b)'s apartment, obtained her ID from § 87(2)(b) and then rejoined § 87(2)(b) in the hallway. § 87(2)(b) was then escorted to the stationhouse and charged with § 87(2)(b).

While PO Diaz was fingerprinting § 87(2)(b) § 87(2)(b) observed the name “Diaz” and the number 28347 on the badge area of PO Diaz’s uniform.

Results of Investigation

Officer Statements

Arrest Report: PO Daniel Diaz (encl. 10a)

On July 10, 2009, PO Daniel Diaz filled out an arrest report regarding this incident, which indicates that § 87(2)(b) was arrested for assault at approximately 11:14am after § 87(2)(b) informed PO Diaz that, following a verbal dispute, § 87(2)(b) had struck her in the face, causing minor lacerations to her forehead and causing pain to her head. The report further indicates that PO Diaz was on duty and in uniform at the time of § 87(2)(b)’s arrest and that no force had been used to effect the arrest of § 87(2)(b).

Officers Not Interviewed

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

NYPD Documents

Arrest Photograph of § 87(2)(b) (encl. 11a)

§ 87(2)(b)’s arrest photograph reveals no visible injuries.

Complainant/Victim Criminal Conviction History (encl. 12a-e)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)

Complainant CCRB History (encl. 3a)

This is the first complaint that § 87(2)(b) has filed with the CCRB.

Police Officer CCRB History (encl. 2a)

PO Daniel Diaz has four years of tenure and no previously substantiated CCRB complaints for which discipline has been imposed.

Conclusions and Recommendations

Officer Identification and Allegations Not Pleaded

§ 87(2)(b) alleged that a Hispanic male officer and a white male officer entered her apartment. During the incident, § 87(2)(b) observed the name “Diaz” and the number 28347 written on the Hispanic male officer’s badge and name plate. § 87(2)(b)’s arrest report indicates that her arresting officer was PO Daniel Diaz, a Hispanic male whose badge number is 28347. § 87(2)(g)

Preliminary attempts to obtain a positive identification of the white male officer were unsuccessful. § 87(2)(g)

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Allegation A: PO Daniel Diaz entered § 87(2)(b) in Brooklyn.

Allegation B: An officer entered § 87(2)(b) in Brooklyn.

In *New York Search and Seizure*, Barry Kamins notes, “Some courts have held that when a police officer engages in a conversation with a suspect while the officer is outside the apartment and, during the conversation, the officer enters the apartment without objection by the suspect, the suspect has consented ‘by inference’ to the warrantless entry” (encl. 1a). § 87(2)(b) testified that she had been speaking with the officers prior to their entrance into her apartment and continued to speak with them once they entered her apartment. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: